IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 774 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AYE SRI KHODIYAR HARIJAN SAMUDAYIK SAHKARI KHETI MANDLI
Versus
GUJARAT ELECTRICITY BOARD

Appearance:
1. Special Civil Application No. 774 of 2003
MR PF MAKWANA for Petitioner
MS LILU K BHAYA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 02/08/2004

ORAL JUDGEMENT

1. The petitioner seeks a declaration that the impugned disconnection of the electricity supply by the respondents, as reflected in the order at Annexure "F" to

the petition dated 12-1-1995, is illegal, and that, the respondents should be directed to re-connect or restore the electricity supply to the petitioner forthwith.

2. By the impugned order at Annexure "F" made on 12-1-1995, the petitioner was informed that the electricity supply was disconnected because of its irregularity in making the payment of the electricity bills. The petitioner was also informed that if he wanted the electricity supply to be restored, he should pay the remaining amount of Rs.17,807=32.

3. It appears from the record that the respondent Board had filed Special Civil Suit No.7 of 1997 in the Court of Civil Judge (S.D.) - Patan for recovery of Rs.76,689=03, with interest, from the petitioner. In the written statement filed by the petitioner, it was stated in paragraph 4 that only an amount of Rs.17,807=32 was due, as per the letter dated 12-12-1994 of the Board, and that, no other amount was payable. It is stated by the learned counsel that the said suit has been decreed in favour of the respondent Board on 17-1-2003. In paragraph 15 of the affidavit-in-reply filed on behalf of the respondent Board, it is alleged that the petitioner has intentionally suppressed the fact that the suit was decreed in favour of the respondent Board on 17-1-2003.

4. It is clear from the record that the issue of disconnection of electricity supply to the petitioner, as reflected from the impugned order at Annexure "F" to the petition, was the subject matter of dispute before the Civil Court, and that suit has been decreed in favour of the respondent Board. It also appears that the present petition was filed after the petitioner failed in getting any interim relief in that suit on his application exh.26. The Appeal From Order No.49 of 2001 preferred by the petitioner was dismissed for default, as stated in paragraph 16 of the affidavit-in-reply, which is not controverted.

5. In the above view of the matter, the petitioner cannot agitate the matter, which was directly and substantially an issue in the civil suit in which a decree has been passed against the petitioner, in the present petition, without pursuing his remedy against that decree. The petition is, therefore, rejected, without prejudice to the rights and contentions of the petitioner in the context of the decree that has been passed against the petitioner. Notice is discharged with no orders as to costs.

[R.K.ABICHANDANI, J.]

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